

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY DeFOGGI and
ZACHARY AUSTIN,

Defendants.

8:13CR105

**MOTION TO DISMISS
FORFEITURE ALLEGATION**

COMES NOW the Plaintiff, United States of America, and respectfully requests this Court dismiss the Forfeiture Allegation set forth in the Indictment filed herein. In support of this Motion, the Plaintiff respectfully shows the Court as follows:

1. Defendant, Timothy DeFoggi, was found guilty by a jury (Filing No. 218) and was sentenced (Filing No. 282) on January 5, 2015. The Forfeiture Allegation was not addressed at the trial, the sentencing or in the Court's Judgment (Filing No. 290).

2. Defendant, Zachary Austin, by way of plea agreement (Filing No. 200), plead guilty to count III of the Indictment and agreed to plead to the Forfeiture Allegation. However, the Forfeiture Allegation was not addressed at Austin's sentencing (Filing No. 249) or in the Court's Judgment (Filing No. 250).

3. Because the Forfeiture Allegation was not addressed at the Defendants' sentencings, the United States cannot complete the forfeiture of the items mentioned in the Forfeiture Allegation. The United States will, however, take those steps necessary to dispose of the items in a lawful manner.

WHEREFORE the Plaintiff, United States of America, respectfully requests this Court enter an Order dismissing the Forfeiture Allegation of the Indictment filed herein.

UNITED STATES OF AMERICA,
Plaintiff

DEBORAH R. GILG
United States Attorney

By: s/Nancy A. Svoboda
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CERTIFICATE OF SERVICE

I hereby certify on March 11, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court of the United States District Court for the District of Nebraska by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/Nancy A. Svoboda
NANCY A. SVOBODA
Assistant United States Attorney